

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	No. 13-CR-04-GKF
	)	
TARRAN ARNEL BRINSON,	)	
	)	
Defendant.	)	

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE GREGORY K. FRIZZELL  
UNITED STATES DISTRICT JUDGE

NOVEMBER 6, 2013

**REPORTED BY:**      **BRIAN P. NEIL, RMR-CRR**  
                             **United States Court Reporter**

## A P P E A R A N C E S

**Danny C. Williams**, U.S. Attorney, **Trent Shores** and **Clint Johnson**, Assistant U.S. Attorneys, 110 West Seventh Street, Suite 300, Tulsa, Oklahoma, 74119, attorneys on behalf of the Plaintiff;

**Patrick M. Megaro**, Attorney at Law, Brownstone Law Firm, 400 North New York Avenue, Suite 215, Winter Park, Florida, 32789, attorney on behalf of the Defendant;

**Stephen P. Gray**, Attorney at Law, Gray & Associates, 3101 North Hemlock Circle, Suite 112, Broken Arrow, Oklahoma, 74012, attorney on behalf of the Defendant;

**Allen M. Smallwood**, Attorney at Law, 1310 South Denver Avenue, Tulsa, Oklahoma, 74119, attorney on behalf of the Defendant.

1 Wednesday, November 6, 2013

2 \* \* \* \* \*

3 DEPUTY COURT CLERK: We're here in the  
4 matter of the United States of America v. Tarran Arnel  
5 Brinson, Case No. 13-CR-04-GKF. Will the parties  
6 please enter their appearance?

7 MR. JOHNSON: Good afternoon, Your Honor.  
8 Clint Johnson, Danny Williams, and Trent Shores on  
9 behalf of the United States.

10 THE COURT: Good afternoon.

11 MR. MEGARO: Good afternoon, Your Honor.  
12 Patrick Mike Megaro, M-e-g-a-r-o, on behalf of  
13 Mr. Brinson.

14 MR. GRAY: Stephen Gray on behalf of  
15 Mr. Brinson also.

16 MR. SMALLWOOD: Allen Smallwood still here,  
17 Judge.

18 THE COURT: Mr. Smallwood, I did see your  
19 two motions filed last evening. We'll deal with them  
20 at the end of today's proceedings.

21 MR. WILLIAMS: Thank you, Judge.

22 THE COURT: Mr. Brinson, I have two initial  
23 questions for you, sir. My first question is, did you  
24 receive a copy of the revised presentence  
25 investigation report dated October 31st, 2013, in a

1 timely fashion?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Secondly, have you had a full,  
4 fair, and complete opportunity to discuss the contents  
5 of that revised presentence investigation report with  
6 your attorneys?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are there any issues? I know  
9 there is one objection here as to the revised  
10 presentence report.

11 MR. MEGARO: Your Honor, I have put my  
12 objection in writing. It's the two-level enhancement  
13 for obstruction. Other than that, there was an error  
14 in my sentencing memorandum which I would like to  
15 correct at this time.

16 THE COURT: Please, if you would.

17 MR. MEGARO: I believe it's paragraph 47.  
18 I mistakenly included a one-level reduction for  
19 acceptance of responsibility. I believe that was a  
20 typographical error, that should not be included, and  
21 I would withdraw that at this time.

22 THE COURT: All right. In other words,  
23 withdraw the entire paragraph?

24 MR. MEGARO: Thank you.

25 THE COURT: Is that correct?

1 MR. MEGARO: Before I speak too soon, I  
2 apologize, let me just triple-check.

3 THE COURT: Yes, sir.

4 MR. MEGARO: That's correct, Your Honor.

5 THE COURT: All right. Let me revise then  
6 my response to that.

7 All right. Any formal response from the  
8 government with regard to the objection?

9 MR. JOHNSON: The objections, Your Honor,  
10 just the government stands on its sentencing  
11 memorandum and what we laid forth in there, Your  
12 Honor.

13 THE COURT: Very well. As to that  
14 objection, the court notes for the record that in a  
15 letter to the probation office dated August 26th,  
16 2013, and in defendant's sentencing memorandum at  
17 docket No. 123, the defendant stated one outstanding  
18 objection to that revised presentence report.

19 The defendant objects to the two-level  
20 enhancement for obstruction of justice in paragraph  
21 27. The defendant argues that he was found guilty of  
22 a single count of obstruction of justice and it has  
23 been considered in the base offense level calculation.  
24 He contends that it is double-counted as a specific  
25 offense characteristic, which is impermissible because

1 United States Sentencing Guideline Section 3C1.1 has  
2 fully accounted for the harm.

3 The defendant argues that double-counting is not  
4 permissible where the same conduct on the part of the  
5 defendant is used to support separate increases under  
6 separate enhancement provisions which necessarily  
7 overlap, are indistinct, and serve identical purposes,  
8 citing *United States v. Rucker*, 178 F.3d 1369, at page  
9 1371, a Tenth Circuit decision from 1999.

10 Subsequently, the defendant objects to  
11 the -- I'm sorry. That's the one that was just  
12 stricken so I will take that out as well.

13 This is actually kind of an interesting little  
14 issue, if you like sentencing guidelines, and it's  
15 fairly involved if one gets down into the weeds.  
16 Pursuant to sentencing guideline Section 3C1.1 comment  
17 at note 8, and sentencing guideline Section 3D1.2(c),  
18 because the defendant is convicted of an obstruction  
19 offense, as well as the offense with respect to which  
20 the obstructive conduct occurred, the offenses are to  
21 be grouped together and the greater of the offense  
22 level for the obstruction offense or the offense level  
23 for the underlying offense with a two-level  
24 obstruction enhancement shall be used.

25 The court references the parties to *United*

1 *States v. Provenzano*, 1 Fed.Appx. 43, also 2001 WL  
2 15609, a Second Circuit decision from 2001, which  
3 upheld the use of the higher of the obstruction  
4 calculation or the calculation for the underlying  
5 offense increased by the two-level adjustment for  
6 obstruction pursuant to sentencing guidelines Section  
7 3C1.1, comment.(n.8), for a defendant convicted of  
8 both an obstruction offense and the underlying  
9 offense.

10 Ordinarily, it's necessary to determine the  
11 offense level for the obstruction offense and the  
12 underlying offense separately to ascertain the count  
13 with the highest offense level. However, in this  
14 case, as the obstruction offense and the underlying  
15 offense group and both offenses are calculated under  
16 the Section 2G1.3 guideline, a separate determination  
17 for the offense level for the obstruction count was  
18 not necessary. See United States Sentencing  
19 Guidelines Section 3D1.3, comment.(n.2).

20 However, if the obstruction count were  
21 calculated separately, the two-level enhancement for  
22 obstruction of justice would not be applicable, nor  
23 would the enhancement based upon defendant being  
24 convicted under Title 18, United States Code Section  
25 1591(b)(2) or the six levels of enhancements for other

1 specific offense characteristics applicable to the  
2 underlying offense.

3 The offense level for the obstruction count in  
4 itself is only 24. Therefore, the offense level for  
5 the underlying offense grouped together of 38 is  
6 accurately -- excuse me -- the offense level for the  
7 underlying offense of 38 prevails as accurately  
8 reflected in the presentence report.

9 Clear as mud; right? But it's an interesting  
10 sentencing guideline issue that comes up when you  
11 group these offenses together.

12 Now, that objection having been overruled, any  
13 other objections before the court states its findings  
14 with regard to the sentencing guidelines?

15 MR. JOHNSON: Not from the United States,  
16 Your Honor.

17 MR. MEGARO: Nothing that I haven't already  
18 briefed, Your Honor.

19 THE COURT: Very well. The total offense  
20 level here, and the court finds, is 39. Mr. Brinson's  
21 criminal history category is an I. The term of  
22 custody under the statute under Count 1 is any number  
23 of years to life. Under the sentencing guidelines,  
24 the term of custody for Counts 1, 2, 4, and 5 is 262  
25 months to 327 months. The term of custody as to



1 Counts 2, 4, and 5 under the statute is not less than  
2 10 years or life -- or to life per count.

3 As to Count 3, the term of custody under the  
4 statute is not more than five years. The guidelines  
5 provide for a term of custody for Count 3 of 60  
6 months. I take it that's up to 60 months or is that a  
7 mandatory minimum?

8 PROBATION OFFICER: That's the maximum,  
9 Your Honor.

10 THE COURT: All right. So that's up to 60  
11 months.

12 As to Count 6, the statute provides for a term  
13 of custody of not more than twenty years. As to Count  
14 6, the guidelines provides for a term of custody of up  
15 to 240 months.

16 *(Discussion held off the record)*

17 THE COURT: All right. One correction.  
18 I'm told that the guideline sentence as to Count 3 is  
19 60 months and not up to 60 months.

20 The term of supervised release under the statute  
21 for Count 1 is not more than five years. Under the  
22 guidelines, the term of supervised release ranges from  
23 two to five years. Under the statute, the term of  
24 supervised release on Counts 2, 4, and 5 is not less  
25 than five years to life per count. Under the

1 sentencing guidelines, the term of supervised release  
2 as to Counts 2, 4, and 5 is five years to life per  
3 count. The term of supervised release as to Counts 3  
4 and 6 under the statute is not more than three years  
5 per count. Under the sentencing guidelines, the term  
6 of supervised release for Counts 3 and 6 ranges from  
7 one to three years per count.

8 As to probation, under the statute, the  
9 defendant is ineligible and the same holds true under  
10 the guidelines.

11 The fine under the statute is not more than  
12 \$250,000 per count as to Counts 1 through 6. The fine  
13 under the guidelines ranges from \$25,000 to \$250,000.  
14 Restitution in this case is the sum of \$740. The  
15 special assessment under both the statute and the  
16 guidelines is \$100 per count on each of the six counts  
17 of conviction for a total of \$600.

18 Now, are there any objections?

19 MR. JOHNSON: Not from the United States,  
20 Your Honor.

21 MR. MEGARO: Again, Your Honor, just what I  
22 briefed earlier. Other than that, no.

23 THE COURT: Thank you. Mr. Megaro, the  
24 court would be pleased to hear any arguments you have  
25 on behalf of Mr. Brinson, sir.

1 MR. MEGARO: Certainly. Thank you, Your  
2 Honor.

3 THE COURT: Yes, sir.

4 MR. MEGARO: Your Honor, first, I would  
5 like to acknowledge the presence of my client's family  
6 and his parents and his brother who are here. These  
7 people have submitted letters of recommendation on his  
8 behalf. They have been extraordinarily helpful in  
9 helping me do my job, and I would like to thank them  
10 at this time for being there to support their son and  
11 brother.

12 Judge, I look at my client. He's just a child  
13 himself. I've read many, many, many medical journals,  
14 psychological journals in which studies have been  
15 conducted about maturity in young males. And one  
16 after another a lot of studies that I've read over the  
17 years have indicated that the male mind does not fully  
18 mature until somewhere around 26 to 27 years of age.  
19 There's varying numbers but generally speaking it's in  
20 the late 20s.

21 My client is still a child himself, and as with  
22 most children an immature mind is unable to comprehend  
23 the full nature of consequences of their actions.  
24 When you combine an immaturity -- a mental immaturity  
25 with drug abuse, even as something that might seem as

1 benign as marijuana, I think we all know and we all  
2 recognize that drugs tend to rob a person of the  
3 powers of intellect and reason. When you combine that  
4 with an immature mind, you have a situation where a  
5 young man does not fully appreciate the consequences  
6 of his actions.

7 Here, Your Honor, I see a young man, a family  
8 man, who had a future. He has very strong parents,  
9 very strong loving family. I think back on the last  
10 ten years of my life and everything that has happened  
11 in the last ten years and a lot has happened.  
12 Certainly I'm not the same person I was ten years ago.

13 I try to frame this in the context of where  
14 would I be if the last ten years of my life had simply  
15 not occurred? I try to imagine myself if I were  
16 incarcerated for ten years and try to imagine who I  
17 would be if life had stopped for me in 2003 and I had  
18 stopped developing, I had stopped maturing as a  
19 person, I had stopped all of the things in my life.

20 And when I consider ten years as a 23-year-old  
21 man, this is -- forgive my lack of math -- but this is  
22 approximately 40 percent of this young man's life. A  
23 ten-year minimum here would take 40 percent of this  
24 young man's life and simply put it on hold. If he  
25 were given a ten-year minimum sentence in this case,

1 which is what I'm asking the court to do, he would  
2 still be able to come out, be released from the Bureau  
3 of Prisons, and still be able to lead a productive  
4 life.

5 I recognize the guidelines calculation here and  
6 the numbers are relatively frightening from this point  
7 of view. I understand that Congress has put certain  
8 mandatory minimums on some of the crimes for which  
9 Mr. Brinson has committed -- or has been found guilty  
10 of rather. I recognize that Congress has put a lot of  
11 stock in the guidelines. But sometimes, as the  
12 Supreme Court has noted, the guidelines simply do not  
13 match the offender or the offense.

14 Judge, this young man comes from a really good  
15 family. I would hate to see a future completely and  
16 totally thrown away. I think a ten-year mandatory  
17 minimum sentence is enough to accomplish all of the  
18 penological goals of 3553. I think it's enough to  
19 punish this young man by taking 40 percent of his life  
20 lived so far. I think it's enough to send a message  
21 to him that this type of conduct should not be  
22 tolerated. It's enough to send a message to others in  
23 the community that this type of conduct carries with  
24 it severe ramifications. And it's enough to -- it's  
25 no more than necessary to accomplish all of these

1 other -- these goals that I've just outlined.

2 Other than that, Your Honor, I have extensively  
3 briefed Mr. Brinson's background and the fact that  
4 mitigating factors, a lack of aggravating factors that  
5 I believe are applicable in this case. I won't  
6 belabor the court with repeating everything ad nauseam  
7 that I've submitted in my sentencing memorandum.

8 But apparently a lot of people believe in this  
9 young man and I believe in this young man, and I do  
10 believe if given the chance he will not come back  
11 before this court in the future. Thank you.

12 THE COURT: Thank you, sir. Mr. Brinson,  
13 the court would be pleased to hear any statements you  
14 have on your own behalf, sir.

15 THE DEFENDANT: Yeah. I have no  
16 statements, my lawyer said everything, so --

17 THE COURT: Thank you, sir. Mr. Johnson.

18 MR. JOHNSON: Your Honor, as this court is  
19 well aware of the facts and circumstances surrounding  
20 this case as Your Honor presided over the six-day  
21 trial, examined the documentary evidence, and heard  
22 the witnesses' testimony, I will not belabor or  
23 recount the voluminous evidence in this case but I  
24 would rather highlight a few areas for the court's  
25 consideration.

1 First and foremost, this is a child  
2 sex-trafficking case. Mr. Brinson was the chief  
3 executive officer, he was the chief financial officer,  
4 and the president of his own child sex-trafficking  
5 business. He preyed upon one of the most vulnerable  
6 segments of our society, minor children.

7 whether these young girls were running away from  
8 something or whether they were running to something,  
9 the defendant, as this court heard, promised them  
10 love, affection, attention, and material items, he  
11 induced and he enticed, he persuaded and he cajoled.  
12 He convinced minor children to perform commercial sex  
13 acts so that he could live the lifestyle of a pimp, to  
14 be a player in the game.

15 The tools he used, Your Honor, were marijuana,  
16 material items, shoes, and his charm. Mr. Brinson not  
17 only recruited, but he solicited, transported,  
18 harbored, advertised, and marketed these children for  
19 his own financial gain. All they had to do to acquire  
20 and retain Mr. Brinson's affection was to have sex  
21 with adult men and then make sure Mr. Brinson got the  
22 money that they had acquired in their commercial sex  
23 acts.

24 He had full knowledge of his actions. And as  
25 this court is well aware, not only did he use minors

1 as prostitutes, he used other minors to help him  
2 recruit minor prostitutes. He then used social media  
3 and the Internet to build and maintain and sustain his  
4 business.

5 And even after Mr. Brinson was arrested for his  
6 deplorable conduct, his criminal activities weren't  
7 complete. As this court is well aware, and the jury  
8 convicted Mr. Brinson of, he attempted to subvert the  
9 very criminal justice process that we're here today.  
10 He contacted and attempted to have a Grand Jury  
11 witness to not testify or to either testify falsely  
12 before that Grand Jury. He was doing everything he  
13 could to cover his tracks. No remorse, no regret.

14 The United States asks this court to send a  
15 strong message to Mr. Brinson and any other  
16 individuals that somehow believe it is either moral or  
17 legal to have minor children perform sex acts for  
18 adult men for their own profit. This court has the  
19 opportunity to send that message today.

20 The guidelines have been correctly calculated.  
21 Congress has spoken on this issue. The use of minor  
22 children for sexual exploitation is not now, nor will  
23 it ever be, acceptable.

24 To a few of the defense's arguments in their  
25 sentencing memorandum, it is true that while the



1 defendant used marijuana and supplied marijuana to  
2 minor children, he did not traffic in marijuana and  
3 drugs in the conventional sense. However, he  
4 trafficked in something even worse, he trafficked in  
5 14- and 15-year-old girls.

6 The defense has asked you to think what would  
7 happen to Mr. Brinson for the next ten years, how that  
8 would affect him if he was given a mandatory minimum  
9 sentence. I would like to ask the court to think what  
10 would happen to the three minor children in this case,  
11 specifically C.H. and A.H., what would have happened  
12 to them over the next ten years if Mr. Brinson hasn't  
13 preyed on them and prostituted them out for his own  
14 financial gain.

15 Your Honor, the United States asks this court  
16 to --

17 THE COURT: Well, now wait. A.H. was not  
18 prostituted out.

19 MR. JOHNSON: C.H. was and A.H. was  
20 attempted to be prostituted out, Your Honor.

21 THE COURT: Correct.

22 MR. JOHNSON: We would ask the court to  
23 send an appropriate message in this case, a message  
24 that a guideline sentence in this case is appropriate,  
25 and send a message of deterrence.

1 Thank you, sir.

2 THE COURT: The court will note that it has  
3 received, in conjunction with the defendant's  
4 sentencing memorandum, the letters that Mr. Megaro  
5 referenced from family of Mr. Brinson.

6 Is there anything further before the court  
7 states the sentence?

8 MR. MEGARO: No, Your Honor.

9 MR. JOHNSON: No, Your Honor.

10 THE COURT: The court has reviewed the  
11 defendant's sentencing memorandum at docket No. 123,  
12 wherein the defendant requests an eight-level downward  
13 variance to a total sentence of 120 months, the  
14 mandatory minimum. The defendant cites various  
15 factors in support of his variance request to include  
16 growing up in a poor single-parent home with an absent  
17 father during a portion of his childhood, that his  
18 crimes did not involve acts of or threats of violence  
19 or distribution of narcotics, his lack of criminal  
20 history, that a harsh sentence to promote deterrence  
21 to others is ineffective, that he will be imprisoned  
22 for ten years at a minimum; and further, protection  
23 for the public is not necessary, that he is unlikely  
24 to re-offend, and that excessive imprisonment would be  
25 counterproductive and hinder his ability to maintain

1 existing familial relationships.

2 The court has also reviewed the government's  
3 response to the defendant's sentencing memorandum at  
4 docket No. 124, wherein the government opposes the  
5 defendant's request for variance and requests a  
6 sentence within the applicable guideline range. The  
7 court finds that many of the factors cited by the  
8 defendant are not extraordinary to the extent that  
9 they warrant a variance.

10 However, based upon the totality of the factors  
11 in this case, to include the defendant's age, his lack  
12 of criminal history, and the specific facts of the  
13 offenses in this case, the court finds that a sentence  
14 of 262 to 327 months is greater than necessary to meet  
15 the purposes of sentencing promulgated in Title 18  
16 United States Code Section 3553(a).

17 In particular, the court references the factors  
18 set forth in subsections 2(a), the need to provide  
19 just punishment for the offenses; 2(b), the need to  
20 afford adequate deterrence; and 6, the need to avoid  
21 unwarranted sentencing disparities among defendants  
22 with similar records who have been found guilty of  
23 similar conduct.

24 In two similarly charged and relatively recent  
25 Tenth Circuit cases, each involving multiple teenage

1 victims who are violently forced and/or threatened  
2 with death to act as prostitutes, the defendants  
3 received sentences less than the low end of the  
4 applicable guideline range in this case.

5 The court references *United States v. Wild*, 143  
6 Fed.Appx. 938, 2005 WL 1840172, a Tenth Circuit case  
7 from 2005, upholding three concurrent 120-month  
8 sentences where the defendant took three females, ages  
9 14 to 16, across state lines and forced them to  
10 prostitute themselves with threats of death and  
11 withholding of food and shelter; and *United States v.*  
12 *Sutherland*, 191 Fed.Appx. 727, 2006 WL 2328752, a  
13 Tenth Circuit case from 2006, which upheld a  
14 240-sentence where the defendant forced three minor  
15 females, two of whom who were under 16, to work as  
16 prostitutes by use of violence and threats.

17 Therefore, the court finds that there are  
18 factors in this case that separate the defendant from  
19 the mine run of similarly-situated defendants in  
20 similar cases. The court bears in mind that in  
21 addition to the conspiracy to engage in sex  
22 trafficking of children, as referenced by the  
23 government, the jury found the defendant here guilty  
24 in Count 6 of obstruction of justice.

25 Accordingly, the defendant's motion for variance

1 contained in his sentencing memorandum at docket  
2 No. 12 is granted in part and denied in part and the  
3 court will vary downward three levels to an offense  
4 level of 36. Combined with the defendant's criminal  
5 history category of I, the variance guideline range of  
6 imprisonment is 188 to 235 months.

7 The court recognizes that the United States  
8 Sentencing Guidelines are advisory and are not  
9 mandatory, but has considered the sentencing  
10 guidelines, along with all of the factors set forth in  
11 Title 18, United States Code Section 3553(a), to reach  
12 an appropriate and reasonable sentence in this case.  
13 In determining a sentence, this court has considered  
14 the nature of the offenses and the defendant's  
15 criminal history and his personal characteristics.

16 This case involved the defendant acting as the  
17 pimp of one 14-year-old female, date of birth November  
18 29, 1997, by marketing sexual services to be performed  
19 by the minor victim on web sites, negotiating prices  
20 for the victim's services, providing transportation  
21 and hotel rooms for the victim to meet customers to  
22 perform sexual acts, and retaining a portion of the  
23 profits made by the victims.

24 Further, the defendant attempted to recruit the  
25 16-year-old sister of the victim into his prostitution

1 business. In addition, the defendant utilized a  
2 17-year-old female to aid him in recruiting females to  
3 work as prostitutes and obstructed the administration  
4 of justice by directing another party not to appear to  
5 testify against him before a Grand Jury despite her  
6 having been subpoenaed to appear.

7 The defendant's young age, his minimal criminal  
8 history, and abundant familial support are mitigating  
9 factors. The court has afforded equal weight to the  
10 need for the sentence to reflect the seriousness of  
11 the offense, to promote respect for the law, and to  
12 provide for just punishment.

13 Based upon the aforementioned factors, a  
14 sentence toward the middle of the guideline range will  
15 result in a sentence that is sufficient, but is not  
16 greater than necessary, to achieve the goals of  
17 sentencing mandated by Congress, including adequate  
18 deterrence for this defendant and to others and  
19 protection of the public.

20 A significant term of supervised release is  
21 appropriate based upon the nature of the offenses and  
22 will allow the defendant time to reintegrate into the  
23 community upon release from imprisonment to obtain any  
24 additional substance abuse treatment and vocational  
25 training as needed and to be monitored for future law

1 violations.

2 Sentencing disparities among defendants were  
3 considered in determining an appropriate sentence in  
4 this case and restitution is mandatory.

5 Mr. Brinson, if you'll rise, please. In  
6 accordance with applicable law, this court hereby  
7 imposes the following sentence:

8 It is the order and judgment of this court that  
9 the defendant, Tarran Arnel Brinson, is hereby  
10 committed to the custody of the Bureau of Prisons to  
11 be imprisoned for a total term of 204 months. The  
12 sentence shall consist of 204 months as to each of  
13 Counts 1, 2, 4, 5, and 6, and 60 months as to Count 3,  
14 said counts to run concurrently, each with the other.

15 The court recommends that the defendant be  
16 placed in a facility as close to Tulsa, Oklahoma, as  
17 possible, where he may obtain vocational training and  
18 will allow him the opportunity to be treated in the  
19 Bureau of Prisons' residential substance abuse  
20 treatment program.

21 The defendant shall pay restitution in the total  
22 amount of \$740 to victim C.H. as listed in paragraph  
23 66 of the presentence report to which there's been no  
24 objection. And as authority for the amount of  
25 restitution in this case, which is determined by the

1 amount collected, see *United States v. Robinson*, 508  
2 Fed. Appx. 867, at pages 870 through 871; also 2013 WL  
3 150181 (11th Cir. 2013).

4 Based upon the defendant's financial profile as  
5 outlined in the presentence report, the court finds  
6 that the defendant does not have the ability to pay a  
7 fine, and therefore, no fine will be imposed.

8 Now, any monetary penalty is due in full  
9 immediately but is payable on a schedule of the  
10 greater of \$25 quarterly or 50 percent of income  
11 received from any source while imprisoned, to include  
12 income pursuant to the federal Bureau of Prisons'  
13 inmate financial responsibility program if the  
14 defendant voluntarily participates in that program. If  
15 a monetary balance remains, payment is to commence no  
16 later than 60 days following release from imprisonment  
17 to a term of supervised release in equal monthly  
18 payments of \$100, or 10 percent of net income; that  
19 is, his take-home pay, whichever is greater, over the  
20 duration of the term of supervised release and  
21 thereafter as prescribed by law for as long as some  
22 debt remains. Notwithstanding establishment of a  
23 payment schedule, nothing shall prohibit the United  
24 States from executing or levying upon property of the  
25 defendant discovered before or after the date of this



1 judgment. Interest on the restitution will be waived.

2       Upon release from imprisonment, the defendant  
3 shall be placed on a term of supervised release for a  
4 period of five years as to Count 1, ten years per  
5 count as to each of Counts 2, 4, and 5, and three  
6 years as to each of Counts 3 and 6. Said terms of  
7 supervised release shall run concurrently, each with  
8 the other, for a total term of ten years. Should  
9 those terms of supervised release be revoked, an  
10 additional term of imprisonment of up to five years as  
11 to Count 1 and two years per count as to Counts 3 and  
12 6 could be imposed at each revocation.

13       As to Counts 2, 4, and 5, if the defendant  
14 commits any criminal offense under Chapter 109A, 110,  
15 or 117, or Section 1201 or 1591 for which a term of  
16 imprisonment longer than one year can be imposed, the  
17 court shall revoke the supervised release and require  
18 the defendant to serve a term of imprisonment of not  
19 less than five years. Upon revocation for other  
20 reasons, the term of imprisonment shall not exceed  
21 five years at each revocation.

22       Immediately upon release from confinement, but  
23 in no event later than 72 hours thereafter, the  
24 defendant shall report in person to the probation  
25 office in the district to which he is released. while

1 on supervised release, the defendant shall not commit  
2 another federal, state, or local crime.

3 The defendant shall comply with the requirements  
4 of the Sex Offender Registration and Notification Act,  
5 Title 42 United States Code Section 16901, et seq., as  
6 directed by the probation officer, the Bureau of  
7 Prisons, or any state sex offender registration agency  
8 of a state in which he resides, works, is a student,  
9 or was convicted of a qualifying offense.

10 The defendant is prohibited from possessing a  
11 firearm, ammunition, destructive device, or other  
12 dangerous weapon.

13 The defendant shall, at the direction of the  
14 United States probation officer, cooperate with and  
15 submit to the collection of a DNA sample for  
16 submission to the combined DNA index system.

17 Further, the defendant shall not unlawfully use  
18 or possess a controlled substance. The defendant  
19 shall submit to one drug test within 15 days of  
20 release on supervised release and at least two  
21 periodic drug tests within 120 days for use of a  
22 controlled substance. That's all to say that when  
23 you're released, a probation officer or an office will  
24 keep track and take drug tests to make sure you're  
25 staying away from drugs.

1           The defendant shall comply with the standard  
2 conditions that have been adopted by this court and  
3 shall comply with the following additional special  
4 conditions:

5           Number one, the special search and seizure  
6 condition; number two, the special substance abuse  
7 treatment and testing condition; number three, the  
8 special sex offender conditions; number four, the  
9 special financial conditions; and number five, the  
10 special workforce development condition.

11           It is further ordered that a \$100 special  
12 monetary assessment per count of conviction for a  
13 total of \$600 be paid immediately to the United States  
14 Court Clerk for the Northern District of Oklahoma.

15           Now, Mr. Brinson, as I'm sure you've been  
16 advised because you have appellate lawyers sitting  
17 next to you, I have a duty to advise you that you have  
18 a right to appeal your conviction and your sentence.  
19 Do you understand, sir, that any such appeal must be  
20 filed within 14 days of the date the judgment is  
21 entered?

22           THE DEFENDANT: Yes, sir.

23           THE COURT: And further, if you wish to  
24 appeal and you cannot afford an appeal, do you  
25 understand, sir, that there are forms in the court

1 clerk's office to request to appeal in forma pauperis?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I believe we have three  
4 preceding indictments to dismiss?

5 MR. JOHNSON: Yes, Your Honor. We so move  
6 at this time.

7 THE COURT: Upon the oral motion of the  
8 government, the original, the superseding, and the  
9 second superseding indictments are dismissed.

10 Is there anything further here?

11 MR. JOHNSON: Your Honor, you mentioned  
12 taking care of Mr. Smallwood's motion.

13 THE COURT: Yes. Thank you very much for  
14 reminding me.

15 I take it there is no objection to the motions?

16 MR. JOHNSON: Not from the United States,  
17 Your Honor.

18 THE COURT: Clearly, the application to  
19 withdraw as attorney of record at document No. 125 is  
20 granted. Mr. Smallwood asked to withdraw after  
21 sentencing. That having been completed, document  
22 No. 125, the motion to withdraw as attorney of record,  
23 is granted.

24 Now, as to the second motion, request for  
25 substitution of counsel, I was just procedurally

1 interested, Mr. Smallwood -- that's docket No. 26 --  
2 insofar as the Brownstone Law Firm has already entered  
3 an appearance pro hac vice, is it necessary that a  
4 request for substitution of counsel be granted?

5 MR. SMALLWOOD: Probably not, Judge. I  
6 just did that out of an abundance of caution to make  
7 sure the court --

8 THE COURT: Well, belt and suspenders are  
9 not to be scoffed at, as we all know. So although I  
10 don't know that it's necessary, I take it there's no  
11 objection?

12 MR. MEGARO: No, Your Honor. Our firm has  
13 been hired to do the appeal.

14 THE COURT: Yes.

15 MR. MEGARO: So we will file the notice of  
16 appeal and prosecute the appeal through the Tenth  
17 Circuit.

18 THE COURT: Very well. Mr. Smallwood's  
19 request for substitution of counsel at document No. 26  
20 is granted out of an abundance of caution.

21 Is there anything further here?

22 MR. JOHNSON: Not from the United States,  
23 Your Honor.

24 THE COURT: Well, it's very clear to this  
25 court, Mr. Brinson, that you have a great deal of

1 ability and I just ask that you use this to turn your  
2 life around. I think everyone here understands the  
3 raw ability that you have. Whatever happens on your  
4 appeal, this is an opportunity for you to take this  
5 and make something positive out of it and certainly  
6 hope you do that.

7 We are adjourned.

8 *(The proceedings were concluded)*  
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## C E R T I F I C A T E

I, Brian P. Neil, a Certified Court Reporter for the Northern District of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in above-captioned case.

I further certify that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 4th day of December 2013.

s/ Brian P. Neil

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Brian P. Neil, RMR-CRR  
United States Court Reporter